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IN THE

SUPREME COURT OF THE UNITED STATES.

PEOPLE ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

CHARLES B. MORRIS, (Claimant) Appellant.

No. [redacted] 62

APPELLANT'S BRIEF ON THE QUESTION OF JURISDICTION AND ON ~~APPELLANT'S~~ APPELLEE'S MOTION TO DISMISS.

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INDEX.

	Page
Statement of appellee incorrect, misleading and ambiguous	1
Incorrect	1
(a) Lloyd's plan	2
(b) Proceeding in St. Louis was not "ex parte"	5
Ambiguous and misleading	6
Answer to appellee's five arguments	9
Federal question	14
Appendix—Amendment of opinion by Court's own motion	21

Cases Cited.

Chemical National Bank v. Hartford Deposit Co., 156 Ill. 522 (aff'd 161 U. S. 1), 40 L. Ed. 595	12
Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865	12
Commercial Trust Co. v. Mallers, 242 Ill. 50	12
Commonwealth Co. v. Bradford, 297 U. S. 613, 619, 80 L. Ed. 920	17
Dillon v. Elmore, 361 Ill. 256, 363	12
Fischer v. American United Ins. Co., 314 U. S. 549, 555, 86 L. Ed. 444	17
General Baking Co. v. Harr, 300 U. S. 433, 81 L. Ed. 730	17
Harkin v. Brundage, 276 U. S. 36, 72 L. Ed. 457	10
Kenney v. Royal Order of Moose, 285 Ill. 188; reversed in Kenney v. Supreme Lodge, 252 U. S. 411, 64 L. Ed. 638	16
Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. Ed. 885	9

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, 88 L. Ed. 149 ..... 15, 19
McDonald v. Pacific States Life Insurance Company, 344 Mo., page 1, 124 S. W. (2d) 1157 ..... 13, 14
Milwaukee County v. M. E. White Co., 296 U. S. 268, 276-277, 80 L. Ed. 220 19
Ohio & Mississippi Ry. Co. v. Russell, 115 Ill. 52, 57 .. 12
Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, 79 L. Ed. 850 10
People v. West Side Trust & Savings Bank, 362 Ill. 607, 616 12
Riehle v. Margolies, 279 U. S. 218, 73 L. Ed. 669 10
U. S. v. Bank of N. Y. Co., 296 U. S. 463, 478, 80 L. Ed. 331 17
Watertown Fire Insurance Co. v. Russ, 141 Ill. 85 .. 12
Willitts v. Waite, 25 N. Y. 577, 581 12

Textbooks Cited.

1 C. J. S., "Abatement and Revival," 151-53, Secs. 108, 109 12
12a C. J., "Corporations," 985 12
19 C. J., "Corporations," 1206, 1220 12

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vs.

CHICAGO LLOYDS, (Respondent) Appellee,

CHARLES B. MORRIS, (Claimant) Appellant.

No. 961.

APPELLANT'S BRIEF ON THE QUESTION OF JURISDICTION AND ON APPELLANT'S APPELLEE'S MOTION TO DISMISS.

The statement of appellee disclosing matter making against the jurisdiction of this Court is incorrect, misleading and ambiguous.

Incorrect.

While the statement uses the term "insurance estate" on the first page thereof in referring to Chicago Lloyds, it deals with the question as though "Chicago Lloyds" were an Illinois created corporation, which was not only dissolved, but had had its charter forfeited by the decree of the Illinois Superior Court on February 9, 1938; whereas the record conclusively discloses, that "Chicago Lloyds" was a voluntary association and aggregation of numerous individuals (R. 56), under a mutually formed agreement, whereby they carried on an insurance business in such

States of the Union as they desired to enter, upon compliance with the terms of their respective laws. They formed their association voluntarily, and in order to do business in the State of Illinois, their contract of association had to conform to the laws of that State, entitled "Article V. Lloyds", Chapter 73, Revised Statutes 1937.

(a) Lloyds' Plan.

Sections 698 to 713, inclusive, thereof provide that individuals and aggregations of individuals may transact an insurance business in the State of Illinois through an attorney-in-fact under the name "Lloyds" or under a "Lloyd's" plan of operation. That such business may be transacted by either a Domestic Lloyds, "which means a Lloyds having the home office in the State of Illinois," or a Foreign Lloyds, "which means a Lloyds having the home office in any State of the United States other than Illinois," and an Alien Lloyds, "which means a Lloyds having its home office in any country other than the United States"; and that the principal office of a domestic Lloyds, shall be maintained in the State of Illinois, and that it may be authorized to transact any and all of the kind or kinds of business enumerated in Section 616 of said Chapter 73, upon filing a Declaration, setting forth, the name of the attorney-in-fact, and the name or designation under which contracts are to be effected; the location of the office of the attorney-in-fact, and addresses of the individual underwriters; the class or classes of insurance which such Lloyds proposes to transact, "and such other provisions not inconsistent with the law, which may be deemed by the attorney-in-fact or the underwriters to be necessary or advisable"; providing further, that upon the execution of this Declaration by the attorney-in-fact for a domestic Lloyds, and the delivery of a duplicate original of the Declaration, and also a copy of the power

of attorney of the attorney-in-fact, and an instrument authorizing service of process upon the Director, provided for in Section 717 of this Chapter, and copies of all the forms of insurance policies or contracts proposed to be used by it, and the forms of applications therefor, and two organization bonds or the cash or securities provided for in Section 705 of this Chapter. It is further provided by said Sections that when those documents and papers are delivered to the Director, and are approved by the Director, that the Director shall thereupon place on file in his office all of such documents, except one of the duplicate originals of the Declaration, and shall endorse upon such duplicate original, his approval, and the month and day and year of such approval thereof, and deliver that back to the attorney-in-fact. Upon such approval of the Declaration, the Director shall issue to the attorney-in-fact **a permit**, which shall expire at the end of one year from its date, authorizing the attorney-in-fact to solicit deposits of underwriters in accordance with this Code, and in accordance with the power of attorney filed with the Director, and to do such other acts as may be necessary or proper in order to complete the organization of such Lloyds, and to entitle it **to receive a certificate of authority**, to transact an insurance business. Section 708 provides that when the Director has been notified that the underwriters have deposited a sum not less than the minimum assets required by Section 711 of this Chapter, the Director shall conduct an examination of such Lloyds; and if he finds that the organization has been completed, and that all other requirements of this Code have been met, he shall issue to such Lloyds **a certificate of authority** to transact the kind or kinds of business specified in the Declaration. Section 699 provides it shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State, until it has first obtained and has in force a certificate of authority issued by the Director.

ALL certificates of authority issued under the provisions of this Article shall terminate on the 30th day of June, next following the date of issuance, and may be renewed upon compliance with this Code.

Article XIII of said Chapter 73, R. S. Ill. 1937, is entitled "Rehabilitation, Liquidation, Conservation **and Dissolution** of Companies." Section 799 thereof provides that the Article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State. Section 800 provides grounds for "rehabilitation and liquidation of domestic company." Section 808 provides for **an order of dissolution** as follows— "If the company against whom the petition for liquidation is filed be a corporation, **and the petition prays for dissolution** of such company," the Court shall have such jurisdiction either before or after final **liquidation** of the property, business and affairs of such company, **after** service of an order to show cause and a full hearing, to enter a decree **dissolving** such company.

The petition filed by the Director of Insurance (R. 2) shows on its face that Chicago Lloyds was not a corporation; the prayer did not ask for a dissolution (R. 3); the decree (R. 5) contains no order of dissolution.

Chicago Lloyds, desiring to transact its business in the State of Missouri, solicited and obtained the consent of the State of Missouri to transact its business therein; and in compliance with the Missouri Statute, Section 5894, filed a written instrument or power-of-attorney with the Superintendent of Insurance to receive service of process which is valid and binding, and deemed personal service upon the company "so long as it shall have any policies, or **liability** outstanding in this State, although such company may have withdrawn, been excluded from, or ceased to do business in this State."

(b) **Proceeding in St. Louis Was Not "Ex Parte."**

Appellee would give this Court the impression that the proceeding in St. Louis was an "ex parte" proceeding. The record in this case, as well as the opinion of the Illinois Supreme Court, shows that service was had not only upon the Superintendent of Insurance of Missouri, but also upon all of the defendants in the case; that the defendants filed answers, and the case was at issue on February 9, 1938, when the decree of **liquidation** was entered in the Superior Court of Illinois. Furthermore, the characterization, that this was an "ex parte proceeding" completely ignores the following facts, namely: that it was on the day of the trial that counsel for "Chicago Lloyds" notified the Circuit Court in St. Louis that he had been requested by the Liquidator to withdraw; thereupon the case proceeded to trial; a jury was waived, the Court took the case under advisement; and instead of rendering a judgment at the conclusion of the case, instructed the Clerk of the Circuit Court of St. Louis to write the Liquidator, that the case was under submission, and to request his reaction (Claimant's Exhibit 4, R. 53). The Liquidator received the letter, and in reply wrote (Liquidator's Ex. 3, R. 59) that Chicago Lloyds was being liquidated in proceedings pending in the Superior Court of Cook County; that the order appointing the Director of Insurance of Illinois as Liquidator was entered February 9, 1938; that the attorney representing Chicago Lloyds in the proceeding in Missouri had withdrawn at the Liquidator's request, because it was the Liquidator's position, that the plaintiff in said suit was enjoined from proceeding to obtain judgment against Chicago Lloyds; and that the injunction order entered February 9, 1938, specifically provides (R. 60): "All persons are hereby immediately restrained and enjoined from obtaining, or attempting to obtain, preferences, judgments, attachments or other like

liens * * * until the further order of the Court." The Liquidator further contended in said letter, that the liquidation proceeding in the State of Illinois was an action in rem, analogous to a bankruptcy proceeding, and that the injunctive order is good, without notice, and without service of process upon a violator of the same; and that he believes that the plaintiff by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of that injunction, and that should he bring such a judgment into Illinois and attempt to enforce it there, that he would be violating the injunctive order.

Ambiguous and Misleading.

Appellee's statement that the basic issue in this case is whether a prior Illinois judgment, which vests an insolvent estate in a Liquidator, for the purpose of having it distributed according to the Illinois Statute, is entitled to priority over an ex parte judgment, entered in Missouri against the insolvent company three years after the entry of the liquidation order in the Illinois Court, is ambiguous, because it does not state what manner of priority over the judgment of the Missouri Court is claimed for the order of the Illinois Court directing liquidation.

Appellant Morris commenced the action in which the Missouri judgment was rendered, on August 24, 1934,—about three and one-half years before the order directing liquidation was entered by the Illinois Court. This action was pending and awaiting trial in the Missouri Court at the very time the order directing liquidation was entered by the Illinois Court. The Missouri Court had jurisdiction over the parties and of the subject matter. After the order directing liquidation was entered, Morris presented to the Liquidator his verified claim, and attached thereto a copy of the complaint which had been filed in the Missouri Court, and stated therein, that when said suit in Mis-

souri had been decided and judgment entered, he would file an amended and supplemental claim, and attach thereto a properly authenticated copy of such judgment. The Liquidator refused to defend the Missouri action, as above stated, although in accordance with the decision of this Court, in the case of Relfe v. Rundel, 103 U. S. 222, 28 L. ed. 337, he had that right if he desired to, or intended ever to dispute the merits and the liability and the amount thereof.

Appellee's statement that appellant demanded full faith and credit for the judgment "against the res in the possession of the Illinois Liquidator," or sought to have "effect" given to the judgment against the assets held by the Illinois Liquidator, suggests and implies that appellant sought to enforce the Missouri judgment by levy or other sequestration of property in the possession of the Liquidator. No lien against such assets, and no preference or priority over other unsecured creditors was, or is, asserted.

The basic question is whether consistently with Section 1 of Article IV of the Constitution of the United States, full faith and credit may be refused to a judgment for money, rendered by a competent court of one State having jurisdiction of the subject matter and of the parties, in an action against a "Lloyds" which was commenced many years before the entry of an order directing liquidation of that Lloyds, by a Court of another State, merely because the **judgment** of the former state was rendered **after** the entry of the order directing liquidation of that Lloyds. Expressed differently, the question is whether the Court which enters an order directing the liquidation of a Lloyds, has exclusive jurisdiction to liquidate claims against that Lloyds, notwithstanding the full faith and credit clause of the constitution of the United States, and whether it may refuse to give credit to a judgment of a

competent Court of a sister State having jurisdiction of the subject matter and of the parties, rendered after, but in an action commenced and pending long prior to the entry of an order directing liquidation. Or, expressed in still another way, the question is: Does the entry of an order directing liquidation of a Lloyds which is merely licensed to do business in the State of Illinois, and likewise licensed to do business in the State of Missouri, prevent the Courts of the sister State, Missouri, from rendering valid judgments in suits pending before them against that Lloyds, so that if the judgments are rendered in such suits, the state of the Court which entered the order directing liquidation of that Lloyds, is not required to give full faith and credit to the judgment so rendered by the sister State?

The Supreme Court of Illinois, by its decision in this case has held that, under the Illinois Statute which provides that title to the assets of a "Lloyds" which is being liquidated under its laws, vests in the Liquidator title to all of its property, wherever situated, whether in Illinois or Missouri, and that full faith and credit need not be given to the judgments of a sister State rendered subsequent to such an order of liquidation, although the case had been pending prior thereto, with jurisdiction of the parties and of the subject matter, as above stated, and when that Lloyds was also licensed in Missouri.

We contend that, so construed, the statute is repugnant to Section 1 of Article IV of the Constitution of the United States, and that therefore there is drawn in question the validity of this statute, when so construed and given effect, on the ground of its being repugnant to the constitution of the United States.

Although it is apparent from the quotations from the opinion of the Supreme Court of Illinois appearing in appellee's statement, that that Court actually rested its de-

cision upon the Illinois statutes, appellee argues, nevertheless, that the decision "merely involved the construction of the Illinois statutes." It is the settled rule of this Court that it must accept the decision of the highest court of the State fixing the meaning of State legislation, as though such meaning had been specifically expressed therein; and that, since the construction becomes part of the statute, that construction is to be read as though in its text (Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. Ed. 885). Therefore, since the Supreme Court of Illinois, by its decision in this case, has given the Illinois statute a construction and meaning that full faith and credit should not be given to judgments of sister states, that construction and meaning must be read into the statute as though incorporated in the text thereof.

Appellee has advanced five arguments going, not to the question of the **right to appeal** from the decision of the Supreme Court of Illinois, but to the **correctness** of that decision.

1.

He asserts that appellant was not "deprived of full faith and credit" and that the Missouri judgment "merely yields to the prior judgment of the Illinois court." Looking through the niceties of expression, the **fact** remains, that Illinois has refused to give any credit to the Missouri judgment. It disallowed the claim based thereon, and it is the sheerest sophistry to contend, as appellee contends, that full faith and credit was not denied to the Missouri judgment.

Appellee asserts, obscurely, that "full faith and credit **applied** to this Illinois court order of February 9, 1938" (the order directing liquidation). What does appellee mean? Does he mean that, as an abstract proposition, full faith and credit ought to be given to it, in a sister State?

How was full faith and credit **asked** for in this order? In what State? In what court? In what action? That order was not presented to the Missouri court **in bar** of the action pending there. Appellee argues that, because this order was "prior"—that is, was entered earlier in point of time than the Missouri judgment—the "judgment has no effect against the Liquidator." Appellee is simply begging the question. The Constitution commands, generally, that full faith and credit shall be given to judgments of sister States.

2.

The second argument which appellee has advanced and which, like the first, goes, not to the **right** to appeal, but to the correctness of the decision of the Supreme Court of Illinois, is based upon the principle that the court which first acquires jurisdiction of the res is entitled to retain and dispose of it, in accordance with the law and processes of its jurisdiction. He cites **Harkin v. Brundage**, 276 U. S. 36, 72 L. Ed. 457, and **Penn General Casualty Co. v. Pennsylvania**, 294 U. S. 189, 79 L. Ed. 850, in support of this principle. These cases involve a conflict between two courts of concurrent jurisdiction over which should **administer** the res. There is no such question in this case. There is here no conflict over the res. Missouri asserts no jurisdiction over it. The appellant does not question the exclusive right of the Liquidator to liquidate the assets and to distribute the proceeds in due course among **all** the creditors of Chicago Lloyds. The question here is whether appellant, by virtue of his judgment, is entitled to **share** in the proceeds of the res as a general creditor. In addition, the cases cited do not hold that the court which first acquires the res has exclusive jurisdiction to liquidate claims, and **Riehle v. Margolies**, 279 U. S. 218, 73 L. Ed. 669, holds the other way.

3.

Appellee then argues that appellant "having filed a claim in the liquidating proceedings and having failed to perfect his rights under local law," is barred "for failure to follow the local law in **proving** his claim." Presumably appellee means that appellant was bound to prove his claim de novo, bring his witnesses and try his case before the Liquidator. However, not even any local law is referred to, which compelled appellant to **prove** his claim de novo and, if the local law relied upon is the decision of the Supreme Court of Illinois in this case, it is, in our opinion, repugnant to the Constitution of the United States in so far as it denies full faith and credit to the judgments of sister States, which fixes the liability and the amount. We may here observe that if the contention of appellee be correct, that the Liquidator would have a complete defense in a trial de novo on a cause of action based upon a tort committed in 1932, by pleading the two-year statute of limitation of Illinois and thus completely destroying appellant's claim. Illinois cannot promulgate a local law either by legislative enactment or by decision of its courts, which denies full faith and credit to judgments of sister States. Such a law would violate Article VI of the Constitution of the United States, which expressly prohibits the enforcement of any such state law. The argument reduces itself to this—that appellant was required to follow a local law repugnant to the Federal Constitution, and that failure to do so **bars** the assertion of rights under that Constitution.

4.

The fourth argument advanced by appellee, which likewise goes to the **correctness** of the decision of the Supreme Court of Illinois, and not to the **right** to appeal therefrom, is that the Missouri judgment is void. The theory upon which it is contended that the Missouri judg-

ment if void, is that "Chicago Lloyds" ceased to be a legal entity either upon the day when the order directing liquidation was entered, or on the following June 30, 1938, when its certificate of authority to continue transacting business in Illinois, is supposed to have expired.

However, it is elementary that the entry of an order directing "liquidation of a company" does not work its **dissolution.** Dillon v. Elmore, 361 Ill. 256, 363; People v. West Side Trust & Savings Bank, 362 Ill. 607, 616; Commercial Trust Co. v. Mallers, 242 Ill. 50; Willitts v. Waite, 25 N. Y. 577, 581; Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865. Similarly, it is settled, that the appointment of a Receiver for the property of a company, does not have the effect of abating actions pending against it at the time of the appointment, or of divesting the courts in which such actions are pending of their jurisdiction. 1 C. J. S., "Abatement and Revival," 151-53, Sections 108, 109; 19 C. J., "Corporations," 1206, 1220; 12a C. J., "Corporations," 985; Ohio & Mississippi Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical National Bank v. Hartford Deposit Co., 156 Ill. 522 (aff'd 161 U. S. 1), 40 L. Ed. 595.

The second branch of appellee's theory is that Chicago Lloyds ceases to be a legal entity ipso facto and without acts of its members, or of a court, or of anyone else, upon termination of **a mere authority to transact business in any of the States in which it may have been so licensed and engaged in business.** Argument is unnecessary to demonstrate the fallacy of this contention. Manifestly the failure of even "a corporation" or an association to renew its certificate of authority to transact business in one of the States in which it may have been authorized to transact its business, does not **terminate its legal existence** and does not gain for it immunity from suits. Watertown Fire Insurance Co. v. Russ, 141 Ill. 85.

The Supreme Court of Illinois did not hold in this case, that the Missouri judgment is void.

5.

Finally appellee argues that the decision of the Supreme Court of Illinois is not repugnant to the full faith and credit clause, because it is said, under the statutes and decisions of Missouri, the holder of a judgment rendered in Missouri does not have the right to enforce his judgment against assets located in Missouri, belonging to a dissolved foreign insurance company in liquidation; and that since the full faith and credit clause only requires a sister State to accord the same faith and credit which the judgment would have in the State where rendered, and since appellant did not have a right in Missouri to enforce his judgment against assets located in Missouri belonging to Chicago Lloyds, appellant had no right in Illinois. The fallacy in the above argument lies partly in the supposition that the Missouri judgment is to be enforced against assets, and in the supposition that in Missouri the judgment gave appellant no rights. Appellant does not assert the right to enforce the judgment as a lien against assets in the possession of the Liquidator. He seeks only to have the judgment **allowed**, as a general claim payable in due course of administration. He asserts no lien on assets, and no preference or priority over other creditors. No Missouri case has been cited and we found none, which denied to a judgment of that State the effect it has as an **adjudication of a claim.** The case of McDonald v. Pacific States Life Insurance Company, 344 Mo., page 1, 124 S. W. (2d) 1157, does not hold that a Missouri judgment creditor has no rights, and that he cannot participate as a general creditor in the assets of the judgment debtor, possession of which have been taken by a Liquidator. That case only holds that a judgment creditor cannot levy on property, title to which has passed to a statutory Liquidator of "a dissolved insurance corporation." In fact in that case the Court said at page 1163:

"Respondent is not contending for the right to have his claim paid in the order set forth in the Missouri statute. He is attempting to have his claim paid in full in preference to all other claims, even as to administration expense and taxes."

The right to participate with others, which we ask, is not the same as the right to take the property by levy to the exclusion of others, which the creditor in the McDonald case sought to enforce against the property in Missouri.

As we have observed above, the contentions advanced by appellee are addressed to the correctness of the decision by the Supreme Court of Illinois rather than to the right to appeal from the decision of that Court. We think these arguments ought to have been reserved for the brief on the merits.

Federal Question.

Appellee further contends that this case does not present a substantial federal question worthy of review in this Court. In arguing the question, however, he assumes and infers that this "Lloyds" was in fact an Illinois created **corporation**, and that in a proper proceeding in the Court of Illinois brought for the purpose of dissolving such a corporation, that a dissolution order had been actually entered and the "charter" of such corporation had been forfeited; whereas, in this instant case, "Chicago Lloyds" had no "charter," was not an Illinois created "corporation," but was a voluntary association and aggregation of a number of individuals under an express contract between themselves, whereby they appointed an attorney-in-fact to transact an insurance business for them, not only in the State of Illinois, but also in any other States of the United States from which they would be able to procure a license on compliance with and in

accordance with the burdens and liabilities that they would be required to assume in each of said several states and was merely licensed, by yearly renewals of such license, to transact its business in the State of Illinois.

By using such a suppositious dissolved corporation as a straw man, appellee contends that the liquidation of insolvent insurance companies under State statutes would be hopelessly confused were the Liquidator appointed by the domiciliary State forced to go into each State in which suits were pending against the dissolved and dead insurance company and there defend against such claim.

The very statutes of Illinois distinguish between "rerabilitation," "liquidation" and "dissolution," and the decisions of the State of Illinois which we have above cited, clearly disclose that **even when** dealing with an Illinois created **corporation,** if the Court merely appoints a Liquidator to whom, under the law, the assets of a corporation are transferred, it is necessary for the Court to make a separate and distinct and additional order to effect the dissolution, and forfeiture of the charter of such a corporation. Perhaps that is the reason why, on page 1 of appellee's statement, he refers to this "Chicago Lloyds" as an "estate."

We submit that the statutes, as construed, are repugnant to the Federal Constitution, and that the question whether the statutes are so repugnant, of itself, presents a substantial federal question worthy of review—expressly because the Supreme Court of Illinois by its decision has engrafted an exception to the full faith and credit clause of the Constitution of the United States applicable to a factual situation such as that presented in this case, notwithstanding this Court has said in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, 88 L. Ed. 149:

> "We are aware of no such exception in the case of a money judgment rendered in a civil suit."

The Supreme Court of Illinois, in its opinion in this case, has stated with reference to the question presented by it:

> "These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbiter of such questions arising under the full faith and credit clause."

And again in its opinion, the Supreme Court of Illinois states:

> "This second type of case represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere."

The above statement, announced by that Court, restates the doctrine announced by that Court in Kenney v. Royal Order of Moose, 285 Ill. 188, which this Court reversed in Kenney v. Supreme Lodge, 252 U. S. 411, 64 L. Ed. 638. This statement therefore discloses a misconception of the full faith and credit doctrine as announced by this Court in that case, and as the doctrine applies to sister State judgments. We therefore submit that the failure of the Supreme Court of Illinois to follow the doctrine of Kenney v. Supreme Lodge, 252 U. S. 411, presents a substantial federal question worthy of review.

Appellee contends, and, apparently was sustained by the Supreme Court of Illinois in his contention, that the court which orders liquidation of assets of an insurance corporation of that State, which by its decree has been dissolved and had its charter forfeited to the State, has exclusive jurisdiction to liquidate claims against that corporation, arguing that the liquidation proceeding in such a matter is a proceeding in rem. This Court, however,

held in Riehle v. Margolies, 279 U. S. 218, 223-224, that the liquidation of a claim is a proceeding in personam, and that the receivership court does not have exclusive jurisdiction to liquidate claims. A proceeding to liquidate a claim only establishes rights. A judgment liquidating a claim does not deal with property and does not order distribution. It merely adjudicates a question which precedes distribution. The notion that a receivership court in possession of the debtor's property has exclusive jurisdiction to liquidate claims against the debtor on the theory that the proceeding is in rem has been exploded. Commonwealth Co. v. Bradford, 297 U. S. 613, 619, 80 L. Ed. 920; General Baking Co. v. Harr, 300 U. S. 433, 81 L. Ed. 730; Fischer v. American United Ins. Co., 314 U. S. 549, 555, 86 L. Ed. 444; U. S. v. Bank of N. Y. Co., 296 U. S. 463, 478, 80 L. Ed. 331.

Illinois cannot by its statute deprive courts of Missouri of jurisdiction to hear and determine causes pending before them. The Illinois statute (which does not expressly provide that the Court of liquidation shall have exclusive jurisdiction to adjudicate claims) can have no extra-territorial effect. Therefore, competent courts of Missouri which have jurisdiction over the subject matter and parties, may proceed to hear and determine causes pending before them, and the State of Illinois cannot retaliate by refusing full faith and credit to the Missouri judgment, in violation of the Federal Constitution.

Moreover, if it were desired to present the question whether the Missouri court ought to render a judgment in a case pending before it after an Illinois court has entered an order directing liquidation of a Lloyds, that question should have been raised and decided in the Missouri court, and, we respectfully submit, present substantial questions worthy of review here.

The argument presented by appellee, that appellant "could not effectually change the **character** of his claim" from an unliquidated claim to a liquidated claim, begs the question. Full faith and credit for a mere **claim** are not required by the Constitution, but they are required for a **judgment** of a sister State. Further, the argument that the liquidating Court had entered an injunction cannot avail. Appellant was not a party to the liquidation proceedings, was not served with the injunction, had no notice or knowledge thereof, and was not even within the State of Illinois, and within the jurisdiction of the liquidating court, and further, by continuing to prosecute his Missouri case to judgment, he was not violating **that** injunction. Therefore, that court was powerless to restrain him from prosecuting his pending suit in Missouri.

Further, the argument "that the full faith and credit clause does not affect the power of a State to control the transfer and distribution of property situated within its borders," is also without force, because no such question is involved. The Missouri judgment does not control the transfer and distribution of property in Illinois. It is entitled merely to recognition in Illinois, as an adjudication, that Chicago Lloyds is indebted to appellant in the amount of the judgment. It does not in any way affect the transfer or distribution of property. When Illinois proceeds to distribute the assets of Chicago Lloyds, the appellant, as a judgment creditor, will merely **share** with other creditors in accordance with Illinois law.

We respectfully submit that the questions presented by this appeal are of paramount importance, not alone to the appellant, but to the nation at large. Substantial and vital Constitutional questions other than full faith and credit are presented. The power of States to whittle down the scope of the full faith and credit clause, the very purpose

of which was to make the States integral parts of a single nation, throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the State of its origin (Milwaukee County v. M. E. White Co., 296 U. S. 268, 276-277, 80 L. Ed. 220) ought not be extended. One effect of that clause was definitely, expressly and clearly stated by this Court to be "a nationally unifying force" (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439-440, 88 L. Ed. 149). If the States are to be allowed to engraft "exceptions," the effect of the full faith and credit clause as a "nationally unifying force" will be impaired.

In the jurisdictional statement, which was filed by appellant with the petition for appeal, there was included and attached thereto, the entire opinion which was originally filed by the Supreme Court of Illinois on September 19, 1945. The motion for rehearing was overruled on November 19, 1945. Either at that time or at a later date (the record of the Illinois Court does not show), the Court amended its opinion by deleting therefrom certain portions. The praecipe filed by appellant called for both the original opinion and the modified opinion (from which portions of the original opinion were deleted). When the record was certified by the Clerk, the deleted portions were omitted. We called the attention of the Clerk of the Supreme Court of Illinois to this fact and asked him to include the original opinion, but he informed us that he had been instructed not to include the deleted portions, that the Court did not consider the portions deleted from the original opinion as a part of the Court's opinion. We are attaching deleted portions of the opinion as originally filed, as an appendix to this brief.

This appeal was properly taken under Section 237 (a) of the Judicial Code, but if this Court should think other-

wise, we respectfully submit that, in view of the importance of the questions involved, the appeal may stand as a petition for certiorari, and allowed as such.

Respectfully submitted,

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APPENDIX.

The Court, of its own motion, amended its opinion as follows:

On page 3, in the last sentence of the second paragraph on that page, the words:

> "and no attempt made to establish and prove a contingent claim, as provided by section 209, subsection 3, of the Illinois Insurance Code, discussed later in the opinion,"

were deleted. The sentence was changed to read:

> "The only evidence presented by claimant was the record of this judgment, obtained in the Circuit Court of the City of St. Louis."

On page 12 of said opinion, the last paragraph was deleted. It read as follows:

> "We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment in the St. Louis courts, but that was more than two years after the time had expired

for proving claims. Under section 209, subsection (3), (Ill. Rev. Stat. 1943, chap. 73, par. 821,) if there is a surplus over the amount required to pay those who have filed claims, he would be entitled to participation in such surplus. Full faith and credit perhaps would require allowance of the claim as to this, but there is no showing in this case that there is any surplus."